



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

notice as would put a reasonably prudent man on the alert to discover the same and to guard against the injury.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 278.* 11 Va.-W. Va. Enc. Dig. 574.]

Error to Circuit Court, Wise County.

Action by Sollenberger's Administrator against the Norfolk & Western Railway Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

Ayers & Fulton and *T. W. Reath*, for plaintiff in error.

Bullitt & Chalkley and *Paul Pettit*, for defendant in error.

VALZ *v.* COINER et al.

Nov. 18, 1909.

[66 S. E. 730.]

1. Equity (§ 442*)—Bill of Review—Nature of Remedy.—A bill of review may only be brought on newly discovered evidence on errors apparent on the fact of the record arising on facts either admitted by the pleadings or stated as facts in the decree, and it does not lie to review a decree because contrary to the proofs as the remedy then is by appeal.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1065-1070; Dec. Dig. § 442.* 20 Va.-W. Va. Enc. Dig. 391.]

2. Equity (§ 446*)—Bill of Review—Nature of Remedy.—A bill of review, which shows that the decree sought to be reviewed made no statement of facts nor referred to any agreed statement of facts on which the court's decision adverse to complainant was grounded, does not lie, since the court cannot look to the facts on which the decree was rested, and cannot say whether it was correct or not.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1079-1090; Dec. Dig. § 446.* 2 Va.-W. Va. Enc. Dig. 391.]

3. Appeal and Error (§ 907*)—Presumption.—Where the court on appeal cannot look to the facts on which a decree was rested and cannot determine whether it was correct or not, it will be presumed that the decision of the trial court was correct.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2911-2916; Dec. Dig. § 907.* 1 Va.-W. Va. Enc. Dig. 609.]

Appeal from Circuit Court, Augusta County.

Bill of review by A. M. Valz against P. M. Coiner and others

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

to review a decree. From a decree dismissing on demurrer the bill, complainant appeals. Affirmed.

J. M. Perry, for appellant.

Curry & Curry and *Braxton & McCoy*, for appellees.

VIRGINIA RY. CO. *v.* JEFFRIES' ADM'R.

Nov. 18, 1909.

[66 S. E. 731.]

1. Action (§ 53*)—Injuries to Land—Right to Sue—Temporary or Continuing Injury.—Where injury to the land by the acts of another is of a permanent and continuing nature, all the damages must be recovered in one action by the person owning the land when the injury was inflicted, and may not be recovered by the owner's subsequent grantee.

[Ed. Note.—For other cases, see Action, Cent. Dig. §§ 567, 568; Dec. Dig. § 53.* 4 Va.-W. Va. Enc. Dig. 164.]

2. Waters and Water Courses (§ 60*)—Obstructions—Cause of Action—Accrual—Time.—Where the building of a railroad embankment in a river so changed the channel as to damage the sand bank of plaintiff's intestate, plaintiff's cause of action arose, not necessarily at the time of the construction of the embankment, but when the first injury occurred by reason thereof.

[Ed. Note.—For other cases, see Waters and Water Courses, Dec. Dig. § 60.* 13 Va.-W. Va. Enc. Dig. 681.]

3. Trial (§ 280*)—Instructions Covered by Charge.—Instructions given that if defendant railroad company constructed its embankment into the natural channel of the river, and such construction turned the water onto the sand bank of plaintiff's intestate, they should find for plaintiff, and assess the damages at the diminished value of the bank by reason of the diversion of the water, and, in arriving at plaintiff's damages, they should consider the value of the bank for supplying sand for commercial purposes and the decrease either in quantity or quality of the sand by reason of the diversion of the waters, that the burden was on plaintiff to establish that the land was actually damaged, the extent thereof, and that he was entitled to recover—substantially covered requests to charge that the burden was on plaintiff to show that the land was damaged, the extent of damages, his right against at least one of defendants, and that the jury must be satisfied that the land had been rendered less valuable by defendant's works, and, if defendant's bank was a per-

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.